

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON HUMAN SERVICES**

**Call to Order:** By **CHAIRMAN ARLENE BECKER**, on January 17, 2005 at 1 A.M., in Room 102 Capitol.

#### **ROLL CALL**

**Members Present:**

Rep. Arlene Becker, Chairman (D)  
Rep. Tom Facey, Vice Chairman (D)  
Rep. Don Roberts, Vice Chairman (R)  
Rep. Mary Caferro (D)  
Rep. Emelie Eaton (D)  
Rep. Gordon R. Hendrick (R)  
Rep. Teresa K. Henry (D)  
Rep. William J. Jones (R)  
Rep. Dave McAlpin (D)  
Rep. Tom McGillvray (R)  
Rep. Mike Milburn (R)  
Rep. Art Noonan (D)  
Rep. Ron Stoker (R)  
Rep. Pat Wagman (R)  
Rep. Bill Warden (R)  
Rep. Jonathan Windy Boy (D)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Susan Fox, Legislative Branch  
Mary Gay Wells, Committee Secretary

**Please Note.** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing & Date Posted: HB 255, 1/13/2005  
HB 127, 1/13/2005

Executive Action:

**HEARING ON HB 255**

**Sponsor:** REP. DON ROBERTS, HD 56, BILLINGS

**Opening Statement by Sponsor:**

REP. DON ROBERTS opened the hearing on HB 255. The bill redefines mental disorder to include co-occurring disorders. It is designed to clarify that a mental disorder can, and often will, co-occur with a substance abuse disorder but that such co-occurrence should not disqualify someone from receiving necessary mental health treatment.

**Proponents' Testimony:**

Joan Daly, Director, Psychiatric Services, Deaconess Billings Clinic, gave her testimony.

**EXHIBIT**(huh12a01)

{{Tape: 1; Side: A; Approx. Time Counter: 0 - 12}}

Ed Amberg, Director, Montana State Hospital at Warm Springs, spoke in support of HB 255. He handed in his testimony.

**EXHIBIT**(huh12a02)

{{Tape: 1; Side: A; Approx. Time Counter: 12 - 17}}

Beda Lovitt, Montana Medical Association and Montana Psychiatric Association, stood in support of HB 255.

Bob Olsen, Montana Hospital Association, stood in support of HB 255.

Don Hargrove, Montana Addiction Services Providers, stood in support of HB 255.

{{Tape: 1; Side: A; Approx. Time Counter: 17 - 19.4}}

**Opponents' Testimony:**

Anita Roessmann, Attorney, Montana Advocacy Program (MAP), stated that MAP supports co-occurring treatment. Their concern is that the language in the bill might make a diagnosis of an addiction to drugs or alcohol the same as a diagnosis of mental illness. The amended bill says that if there is a co-occurring mental disorder, then the addiction is also a mental disorder. It goes from saying addiction is not equal to a mental disorder to saying addiction can be a mental disorder; and that is not quite right. The co-occurring disorders may need to be treated together, but they are still distinct. A person being seen, whose primary problem is not mental illness but addiction and intoxication,

would end up at the State hospital. This already happens. Substance abuse is a significant factor in about 60% of the people who go to Billings

Deaconess Clinic. That is the same percent that Mr. Olsen used concerning the State hospital.

MAP was also concerned about the State hospital going over their licensed capacity of 189 clients in 2004. In August, they were almost always over their licensed capacity. Medicaid money goes to this facility and if they should lose their license because they are consistently over their licensed population, the State would lose that federal money. The hospital is staffed for 175 patients. The solution to the problem would be to have facilities in every community where people can go for help, be evaluated and be referred to appropriate services. She asked if the sponsor would be willing to amend the language.

**{{Tape: 1; Side: A; Approx. Time Counter: 19.4 - 24.6}}**

**Informational Testimony:** None

**Questions from Committee Members and Responses:**

**REP. RON STOKER** asked which is more prevalent--alcohol or methamphetamine. **Mr. Amberg** stated that alcohol is more prevalent but that meth is gaining ground quickly.

**REP. STOKER** inquired about the time line and process of a person picked up for intoxication. **Mr. Amberg** explained the procedure.

**{{Tape: 1; Side: A; Approx. Time Counter: 24.6 - 28.7}}**

**REP. MIKE MILBURN** desired a recap of the problem at Deaconess Billings Clinic. **Ms. Daly** clarified that at Deaconess, her staff was qualified to address co-occurring as a normal procedure but Deaconess is not prepared for long-term care.

**{{Tape: 1; Side: A; Approx. Time Counter: 28.7 - 32}}**

**Ms. Daly** continued with her response. She asked that State statute reflect the volume and reality of co-occurring.

**{{Tape: 1; Side: B; Approx. Time Counter: 0 - 0.2}}**

**REP. BILL WARDEN** asked Ms. Daly that if the bill becomes law, would it still have the same impact on Deaconess Billings Clinic in that they would still be writing off \$2.6 million a year. The response was yes.

**REP. EMELIE EATON** wondered that if nothing were changing, why should the wording be changed. **Ms. Daly** replied that the wording

is critical to how the community view the people that they are serving.

**REP. PAT WAGMAN** requested Ms. Roessmann to reiterate what she believed the language meant to her group. **Ms. Roessmann** believed the language states that if addiction is co-occurring with a mental illness, then the addiction is a mental disorder. The definition in the bill states that mental disorder does not include addiction to drugs or alcohol. The new language would state that mental disorder does not include addiction to drugs or alcohol if the addiction is exclusive of any co-occurring mental disorder. She felt that mental illness should be the primary issue. The hospital may be holding people longer in order to satisfy the county attorney that it is really mental illness that is the issue and not the intoxicated person who shows up on a Friday night.

**REP. WAGMAN** inquired if Ms. Roessmann would work on an amendment to the language. **Ms. Roessmann** said that she would like to work on this.

**{{Tape: 1; Side: B; Approx. Time Counter: 0.2 - 6.6}}**

**REP. TERESA HENRY** did not see the same problem as Ms. Roessmann. **Ms. Roessmann** said that she did not want addiction or intoxication to be considered a mental illness diagnosis. She would prefer to have the statute clear that if that is the primary problem, then that person would not be appropriate for commitment to the State hospital. She sees that the proposed language would increase the ability to commit someone to the State hospital for addiction or intoxication.

**{{Tape: 1; Side: B; Approx. Time Counter: 6.6 - 10.5}}**

**REP. ART NOONAN** expressed his concern over the language and the word "co-occurring." He felt that there was a better way to express a mental condition that is underlying an addiction. **Mr. Olsen** informed the committee that the term "co-occurring" has been adapted throughout the public mental health and substance abuse/addiction community.

**REP. NOONAN** then asked if co-occurring is an actual diagnosis or just an attempt to explain a situation. **Mr. Olsen** responded that co-occurring, in itself, is not a diagnosis.

**REP. NOONAN** desired to know if Mr. Olsen was comfortable with the terminology so that a judge could make a wise decision. **Mr. Olsen** said that he was not. He was concerned about the potential for opening the door and thereby committing more people with addictions.

**{{Tape: 1; Side: B; Approx. Time Counter: 10.5 - 15.5}}**

**REP. TOM FACEY** asked if there was a fiscal note and asked why Mr. Amberg was testifying. **Mr. Amberg** offered that others were testifying on other bills but he was asked to attend because the bill more directly affects Warm Springs Hospital. He could have asked for more funding, but the main thrust of the bill was for health care providers to work more closely together.

**REP. FACEY** inquired where people could go other than to Warm Springs from a judge's point of view. **Mr. Amberg** explained that judges typically send the most extreme behavioral problems to Warm Springs. There are other in-patient hospitals: Missoula, Great Falls, and Billings. Smaller programs are in Glendive and Havre. Typically they serve people for shorter periods of time. For in-patient chemical dependency treatment, there is the Montana Chemical Dependency Program located in Butte which is part of his Division.

**{{Tape: 1; Side: B; Approx. Time Counter: 15.5 - 19.3}}**

**REP. WINDY BOY** asked for the definition of different types of abuse. **Susan Fox, Legislative Staffer**, defined it.

**{{Tape: 1; Side: B; Approx. Time Counter: 19.3 - 21.5}}**

**REP. MARY CAFERRO** was curious about the term "co-occurrence" and to whom does it apply. **Ms. Roessmann** explained that the term "co-occurring" is used by those in the substance abuse treatment field and the mental health field. It also is used in the private as well as the public arena.

**REP. CAFERRO** wanted to know how this would impact people in the general population as far as insurance coverage goes. **Ms. Roessmann** felt that it would have no impact.

**{{Tape: 1; Side: B; Approx. Time Counter: 21.5 - 23.3}}**

**REP. HENDRICK** commented on the bill and did not see how addiction could be added to mental health and how insurance companies would handle these cases. **Susan Fox** advised the committee that Title 33, Chapter 22, Part 7 deals specifically with coverage for mental illness, alcoholism and drug addiction. So, for the purposes of health insurance, these have been grouped together.

**{{Tape: 1; Side: B; Approx. Time Counter: 23.3 - 25.6}}**

**REP. WINDY BOY** expressed his fear regarding how this would all be paid for. Many of these people who would be diagnosed with addiction and mental illness are very poor. **CHAIRMAN BECKER** offered that the system is probably already paying for them now.

**REP. ROBERTS** explained that health care providers are finding that people who are diagnosed with a mental illness quite often

are addicted to alcohol or drugs. But addiction seems to be the overriding diagnosis and with that, they cannot be committed. So, at this time, a person diagnosed with an alcohol or drug addiction cannot be committed while their problem is being sorted out. With the new definition, this would not happen.

**{{Tape: 1; Side: B; Approx. Time Counter: 25.6 - 28.7}}**

**REP. EATON** inquired of Mr. Amberg about his hope that more people would not be admitted to Warm Springs because they are already at capacity. **Mr. Amberg** replied that was his hope and explained that at other in-patient hospitals, they first do an assessment of a patient. If that person has a mental disorder and needs extended treatment, they can petition and ask a district court judge to send that person to Warm Springs on an involuntary commitment. He felt that Ms. Daly was saying that when alcohol is involved, they had a harder time convincing the judge that the person did have a mental disorder and should go to Warm Springs.

**{{Tape: 1; Side: B; Approx. Time Counter: 28.7 - 31}}**

**Closing by Sponsor:**

**REP. ROBERTS** closed by saying that he would work with **Ms. Roessmann** to refine the language in the bill.

**{{Tape: 2; Side: A; Approx. Time Counter: 0 - 1.2}}**

**HEARING ON HB 127**

**Sponsor:** **REP. SCOTT MENDENHALL, HD 77, CLANCY**

**Opening Statement by Sponsor:**

**REP. SCOTT MENDENHALL** opened the hearing on HB 127 which would revise the definition of seriously developmentally disabled for the purposes of civil commitment.

**Proponents' Testimony:**

**Jeff Sturm, Superintendent, Montana Developmental Center (MDC), Boulder, DPHHS**, spoke in support of the bill and gave some information concerning the bill. The biggest change in the last 20 years at MDC are the people they serve. Previously, the people served needed total care. Recently, MDC has moved toward individuals with significant behavioral issues. With the passing of SB 35 in 2003, they are receiving more people with criminal backgrounds and criminal commitments. They serve people with dual diagnoses which is mental health and developmental disabilities. Currently, individuals are committed to MDC in one

of two ways. One is on a civil statute which either requires them to be on a short term emergency commitment up to 30 days or a one year commitment to MDC. The other is on a criminal statute. In the current law, to be committed under the civil statute, you have to have one developmental disability. He then explained the differences. HB 127 calls for the removal of near total care. They have had only three near total care people committed to MDC in the last five years. He remarked that over the next few years, MDC will probably become a facility for people with significant behavioral problems or criminal behaviors. Total care will probably cease to be part of their function.

**{{Tape: 2; Side: A; Approx. Time Counter: 1.2 - 7}}**

**Bernadette Franks-Ongoy, Executive Director, Montana Advocacy Program (MAP)**, spoke in favor of the bill. She spoke of the Travis D. settlement and how this is one of the terms of the settlement agreement in that they would come jointly to the Legislature and ask for this change. It was also consistent with the practices of MDC and its mission.

**Opponents' Testimony:** None

**Informational Testimony:** None

**Questions from Committee Members and Responses:**

**REP. RON STOKER** asked for a review of the Travis D. settlement. **Mr. Sturm** explained that Travis D. was a case brought against the State in 1976. A settlement was reached in February 2004. One of the conditions of the settlement was that they come jointly with MAP to ask for the removal of near total care.

**REP. STOKER** continued with his questioning of the case. **Mr. Sturm** elaborated that Travis D. and this bill are not about the same issue. The Travis D. was an issue about people being in institutions and how, over time, it gained a great deal of support. The issue that is part of the Travis D. settlement is the cultural changes that have been going on in community care. Communities are now serving the near total care population.

**Closing by Sponsor:**

The Sponsor closed.

**{{Tape: 2; Side: A; Approx. Time Counter: 7 - 9.8}}**

**ADJOURNMENT**

Adjournment: 4:25 P.M.

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REP. ARLENE BECKER, Chairman

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MARY GAY WELLS, Secretary

AB/MW

Additional Exhibits:

**EXHIBIT ([huh12aad0.TIF](#))**